

CV 11 - 0185

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GARY LEVI,

Plaintiff,

-against-

VITAL RECOVERY SERVICES, INC.,

Defendant(s).
-----X

FILED

IN CLERK'S OFFICE

Civil Action No.: U.S. DISTRICT COURT E.D.N.Y.

★ JAN 12 2011 ★

COMPLAINT

BROOKLYN OFFICE

DEMAND FOR JURY TRIAL

SUMMONS ISSUED

Plaintiff GARY LEVI ("Plaintiff"), by and through his attorneys, M. Harvey Rephen
& Associates, P.C., as and for its Complaint against the Defendant VITAL RECOVERY
SERVICES, INC. hereinafter referred to as Defendant(s)", respectfully sets forth,
complains and alleges, upon information and belief, the following:

SPATT, J.

INTRODUCTION/PRELIMINARY STATEMENT

BOYLE, M.J.

1. Plaintiff brings this action on his own behalf for damages and declaratory and
injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the
United States Code, commonly referred to as the Fair Debt Collections Practices Act
("FDCPA").

PARTIES

2. Plaintiff is a resident of the State of New York, residing at 130 Shore Road,
Port Washington, N.Y. 11050.

3. Defendant VITAL RECOVERY SERVICES, INC. is a professional
corporation, with an address at 3795 Data Drive, Suite 200, Norcross, GA 30092.

4. The Defendant is a "debt collector" as the phrase is defined and used in the
FDCPA under 15 USC §1692a (6).

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 et seq. and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "6" herein with the same force and effect as if the same were set forth at length herein.

8. On information and belief, Defendant, on behalf of a third-party, began collecting an alleged consumer debt from the Plaintiff.

9. On information and belief, and better known to the Defendant, the Defendant began its collection efforts and campaign of communicating with the Plaintiff by calling the Plaintiff in September/October 2010.

10. On November 29th, 2010 the Defendant called the Plaintiff and spoke to him.

11. The Plaintiff informed the Defendant that he had an attorney and that he would have to consult with him concerning a settlement offer.

12. The Defendant on November 29th, 2010 sent the Plaintiff a letter containing a settlement offer.

13. The Plaintiff forwarded the letter to his counsel Attorney M. Harvey Rephen who reviewed the letter and called the Defendant informing them that he represented Gary Levi, gave the Defendant phone number, and informed them that the

Plaintiff intended to pay the debt but that the November 30, 2010 deadline was not possible as Gary needed a little more time to get the necessary funds together.

14. The Defendant thereafter violated 15 USC § 1692c(a)(2) which prohibits contacting a consumer when the debt collector has knowledge of or can readily ascertain, such attorney's name and address, by calling the Defendant on December 1st at 10Am and attempting to collect the alleged debt from him. Further the Defendant called Attorney M. Harvey Rephen at approximately 12:25 PM on Dec. 1st and therefore confirmed they had the correct contact information for him.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

15. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "14" herein with the same force and effect as if the same were set forth at length herein.

16. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 USC §1692c (a) (2).

17. As a result of Defendant's violations of the FDCPA, Plaintiff has been damaged and is entitled to damages in accordance with the FDCPA.

DEMAND FOR TRIAL BY JURY

18. Plaintiff GARY LEVI hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff GARY LEVI demands judgment from the Defendants VITAL RECOVERY SERVICES, INC., as follows:

- A. For actual damages provided and pursuant to 15 USC §1692k(a)(1);
- B. For statutory damages provided and pursuant to 15 USC §1692k(2)(A);
- C. For statutory damages provided and pursuant to 15 USC §1692k(2)(B);
- D. For attorneys' fees and costs provided and pursuant to 15 USC §1692k(a)(3);
- E. A declaration that the Defendant's practices violated the FDCPA;
- F. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York
January 10, 2011

Respectfully submitted,

By: 
M. Harvey Rephen, (MR3384), Esq.
M. HARVEY REPHEN & ASSOCIATES, P.C.
708 Third Avenue, 6th Floor
New York, New York 10017
Phone: (212) 796-0930
Facsimile: (212) 330-7582

Attorney for the Plaintiff Gary Levi

To: Vital Recovery Services, Inc.
3795 Data Drive, Suite 200
Norcross, GA 30092

(Via Prescribed Service)

Clerk,
United States District Court, Eastern of New York
(For Filing Purposes)

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COMPLAINT

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